Zaaba bin Ibrahim v Hj Abdul Ghazali bin Karim (Presiding Officer of Election for the Constituency of P 161 Pulai) & Ors

HIGH COURT (JOHOR BAHRU) — ELECTION PETITION NO 26PP-4–06 OF 2013
PRASAD ABRAHAM J
15 AUGUST 2013

Election — Petition — Application to strike out — Preliminary objection — Petition defective — Non-compliance of r 4(1)(b) and r 15 of the Election Petition Rules 1954 — Facts pleaded do not sustain relief sought by petitioner — Whether mandatory requirement — Whether failure to comply render petition defective — Whether merits petition to be struck out — Election Offences Act 1954 s 32(b) — Election Petition Rules 1954 rr 4(1)(b) & 15 — Election (Conduct of Elections) Regulations 1981 reg 25(12)(b)

This election petition arose out of the recently concluded general election, wherein the third respondent was declared as the elected Member of Parliament for the constituency of P 161 Pulai. The petitioner in this case moved this court to have the election declared null and void on the grounds that there had been a non-compliance of s 32(b) of the Election Offences Act 1954 ('Act'). The respondents in their preliminary objection, raised the issue of non-compliance of the said petition of r 4(1)(b) and r 15 of the Election Petition Rules 1954 ('Rules'). The crux of the first and second respondents argument was that the petition and the facts pleaded do not sustain the relief being sought by the petitioner. The petitioner made reference to reg 25(12)(b) of Election (Conduct of Elections) Regulations 1981 ('Regulations') ie the requirement of the presiding officer to certify the number of votes given to each candidate in Form 14. The petitioner alleges that in certifying Form 14, the presiding officer knew or ought to have known that the particulars of the votes in Form 14 were incorrect. The petitioner then links this alleged transgression to s 4(a) of the said Act and therefore contended that there had been breach of written law under s 32(b) of the said Act. The respondents argued that s 4(a) of the Act is an 'offences' provision and not written law and it therefore follows that the petition falls woefully short of particulars that justify the prayers that the petitioner sought.

Held, striking out the election petition with costs:

(1) The essence of a plea of the breach of the said Regulations including reg 25(12)(b) must contain an averment that the election was not conducted in accordance with the principles laid down in the said Regulations and that such failure did not affect the result of the election.

There had been no reference in the said petition to reg 30(1). In the said petition, there had not been a plea that there has been a breach of reg 25(12)(b) as set out in reg 30(1) of the said Regulation. Regulation 30(1) is the Regulations that creates the election offence under s 32(b) of the said Act, for it is the enabling Regulations that provides for failure to comply with the provisions of the said Regulations (see para 8).

(2) References to s 4(a) of the said Act in the petition are references to offences under the said Act and do not constitute the written law being referred to s 32(b) of the said Act. A breach of s 4(a) of the said Act would lead to criminal charges being preferred against the presiding officer but does not constitute an electoral offence as envisaged by s 32(b) of the said Act (see para 9).

(3) Pursuant to reg 30(1) read together with s 32(b) of the said Act, it was necessary not only to plead that the election result is affected but must proceed to show how the election result would have been affected in favour of the losing candidate. This would enable the respondent particularly the third respondent to answer the charges against him. In this case, the petitioner should have gone on to say that the veracity of the Form 14 and the particulars stated therein if true and proved at trial would have affected the election results in favour of the losing candidate. In the light of the aforesaid and with the lack of reference to reg 30(1) of the said Regulations, the petition was flawed and should be dismissed (see paras 16 & 19).

(4) Rule 15 does not require the election petition to be served personally. Rule 15 read together with r 9 surely must suggest that a duly appointed advocate by the petitioner who attends to service of the petition on behalf of the petitioner would sufficiently comply with r 15 of the Rules (see para 21).

[Bahasa Malaysia summary

Petisyen pilihanraya ini berbangkit daripada pilihan raya umum yang telah diputuskan baru-baru ini yang mana responden ketiga diisytiharkan sebagai ahli parlimen yang dilantik bagi bahagian pilihan raya P 161 Pulai. Pempetisyen dalam kes ini telah menggesa agar mahkamah mengisytiharkan petisyen tersebut sebagai batal dan tidak sah atas alasan bahawa berlakunya ketidakpatuhan s 32(b) Akta Kesalahan Pilihan Raya 1954 ('Akta'). Responden dalam bantahan awal, membangkitkan isu ketidakpatuhan petisyen terhadap k 4(1)(b) dan k 15 Kaedah-Kaedah Petisyen Pilihan Raya 1954 ('Kaedah-kaedah'). Intipati hujahan responden pertama dan kedua adalah bahawa petisyen dan fakta-fakta yang diplidkan tidak mempertahankan relief yang dipohon oleh pempetisyen. Pempetisyen merujuk kepada Peraturan Pilihan Raya (Penjalanan Pilihan Raya) 1981 ('Peraturan') iaitu keperluan-keperluan bagi pegawai pengerusi untuk mengesahkan bilangan

undi yang diberikan setiap calon dalam Borang 14. Pempetisyen mendakwa bahawa dalam mengesahkan Borang 14, pegawai pengerusi tahu atau seharusnya tahu bahawa butir-butir undi dalam Borang 14 adalah tidak tepat. Pempetisyen seterusnya mengaitkan dakwaan pelanggaran ini kepada s 4(a) Akta dan dengan itu menghujahkan bahawa terdapat pelanggaran undang-undang bertulis di bawah s 32(b) Akta. Responden-responden menghujahkan bahawa s 4(a) Akta adalah peruntukan 'kesalahan-kesalahan' dan bukan undang-undang bertulis dan dengan itu, petisyen kekurangan butiran yang memberi justifikasi kepada permohonan yang dipohon oleh pempetisyen.

Diputuskan, membatalkan petisyen pilihan raya dengan kos:

(1) Intipati dalam dakwaan pelanggaran Peraturan termasuk peraturan 25(12)(b) mestilah mengandungi dakwaan bahawa petisyen tidak dijalankan selaras dengan prinsip-prinsip yang dinyatakan dalam Peraturan tersebut dan kegagalan sedemikian tidak menjejaskan keputusan pilihan raya. Tidak terdapat rujukan dalam petisyen terhadap peraturan 30(1). Dalam petisyen tersebut, tidak terdapat akuan bahawa terdapatnya pelanggaran peraturan 25(12)(b) seperti yang dinyatakan dalam peraturan 30(1) Peraturan. Peraturan 30(1) ialah peraturan yang membentuk kesalahan pilihan raya di bawah s 32(b) Akta, kerana ia adalah Peraturan yang memperuntukkan bagi kegagalan mematuhi peruntukan-peruntukan dalam Peraturan (lihat perenggan 8).

(2) Rujukan-rujukan kepada s 4(a) Akta dalam petisyen adalah rujukan-rujukan kepada kesalahan-kesalahan di bawah Akta dan tidak membentuk undang-undang bertulis yang dirujuk di bawah s 32(b) Akta. Pelanggaran s 4(a) Akta membawa kepada pertuduhan-pertuduhan jenayah dihadapkan terhadap pegawai pengerusi tetapi tidak membentuk kesalahan-kesalahan pilihan raya seperti yang digambarkan oleh s 32(b) Akta (lihat perenggan 9).

(3) Di bawah peraturan 30(1) dibaca bersama-sama dengan s 32(b) Akta, adalah perlu untuk bukan sahaja memplidkan bahawa keputusan pilihan raya terjejas tetapi perlu juga ditunjukkan bagaimana keputusan pilihan raya akan menjejaskan calon yang kalah. Ini akan membolehkan responden khasnya responden ketiga untuk menjawab segala pertuduhan terhadapnya. Dalam kes ini, pempetisyen sepatutnya menyatakan bahawa Borang 14 dan butir-butir yang terkandung dalamnya jika benar dan dibuktikan ketika perbicaraan, akan menjejaskan keputusan pilihan raya bagi calon yang kalah. Dalam keadaan sedemikian, dengan ketiadaan rujukan kepada peraturan 30(1) Peraturan, petisyen adalah cacat dan sewajarnya ditolak (lihat perenggan 16 & 19).

(4) Kaedah 5 tidak memerlukan petisyen pilihan raya diserahkan secara

peribadi. Kaedah 5 dibaca bersama-sama dengan k 9 mencadangkan bahawa seorang peguambela yang dilantik oleh pempetisyen yang menghadiri penyerahan petisyen bagi pihak pempetisyen, dengan secukupnya mematuhi k 15 Kaedah-Kaedah (lihat perenggan 21).]

Cases referred to

Devan Nair v Yong Kuan Teik [1967] 1 MLJ 261, PC (refd)
Gan Joon Zin v Fong Kui Lun & Ors [2004] 4 CLJ 729, FC (refd)
Hamad bin Mat Noor v Tengku Sri Paduka Raja & Ors [1993] 3 MLJ 533, HC (refd)
Mohamed Jaafar v Sulaiman & Anor [1970] 1 MLJ 18 (refd)
Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors [2009] 3 MLJ 589; [2009] 3 CLJ 221, FC (refd)
Mohd Sabu v Pegawai Pengurus Pilihan Raya & Yang Lain [2008] 9 CLJ 26, HC (folld)
Muhammad Sanusi bin Md Nor v Md Tajuddin bin Abdullah dan lain-lain [2009] 8 MLJ 131, HC (folld)
Tan Sri Joseph Kurup v Danny Anthony Andipai & Anor [2009] 3 MLJ 1, FC (refd)
Vashist Narain Sharma v Dev Chand and Ors AIR1954 SC 513, SC (refd)
Woodward v Sarsons & Anor (1875) (Birmingham Case) 32 LT 867; [1875] LR 10 CP 733; [1874–80] All ER Rep 262 (refd)

Legislation referred to

Ballot Act 1872 [UK] s 13
Election (Conduct of Elections) Regulations 1981 regs 25(12)(b), 30(1), Form 14
Election Offences Act 1954 ss 2(i), 4(a), 10(a), 11(1), 32, 32(b), (c)
Election Petition Rules 1954 rr 4(1)(b), 9, 15, 15(1)

Mohamed Hanipa b Maidin (Ahmad Zamri and Mohd Fikah Sanusi with him) (Haida Mohd Fikah & Partners) for the petitioner.
Narkunavathy Sundareson (Fajul Shiha and Jalani Abdul Rahman with him) (Senior Federal Counsel, Attorney General's Chambers) for the first and second respondents.
Syed Faisal Al-Edros bin Syed Abdullah (Izzat bin Muhtar with him) for the third respondent.

Prasad Abraham J:

[1] This election petition arises out of the recently concluded general election on the 5 May 2013, wherein the third respondent was declared as the elected member of Parliament for the constituency of P 161 Pulai. The petitioner in this case moves this court to have the election declared null and

void on the grounds that there had been a non-compliance of s 32(b) of the Election Offences Act 1954 (Act 5) ('the said Act') which I set out:

> Avoidance of election on election petition
>
> 32 The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:
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> (b) non-compliance with the provisions of any written law relating to the conduct of any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election;

[2] The respondents gave notice of their intention to raise a preliminary objection, as to the non-compliance of the said petition ie, r 4 in particular rr 4(1)(b) and 15 of the Election Petition Rules 1954 ('the said Rules'). I fixed a hearing of these objections on 29 July 2013 and after hearing the submission of counsel, I upheld the objections, struck out the petition and declared the third respondent as duly elected as Member of Parliament for Pulai.

[3] In dealing with election petitions, with or without preliminary objections, the court must satisfy itself that the petitioner has the locus to file the petition and thereafter to examine whether the said petition had complied with the said rules. Only if the petition reaches this threshold will the said petition be set down for trial. If the court is of the view that this threshold had not been met, the court has the power either on its own volition or on application, to strike out the petition.

[4] I refer to the decision of the Federal Court in *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729 and to the judgment of Her Ladyship Siti Norma Yaakob FCJ and I quote:

> Courts had been entertaining preliminary objections and applications, usually by notices of motion, to strike out election petitions. Election petitions had been struck out on such applications. In other words, not all petitions proceeded to trial and final determination at the conclusion of the trial

And I also quote further:

> We do not think that it can now be argued that an election judge has no power to strike out an election petition but must go through the whole process of trial and make a determination at the conclusion of the trial. We have seen that it had been the practice of election judges in this country ever since the law on elections were introduced in this country to strike out election petitions in appropriate cases.

BREACH OF R 4(1)(B) OF THE ELECTION PETITION RULES 1954

[5] The cruxt of the first and second respondents argument is that the petition and the facts pleaded do not sustain the relief being sought for by the petitioner. A scrutiny of the petition will show that the petitioner makes reference to reg 25(12)(b) of the Election (Conduct of Elections) Regulations 1981 ('the said Regulations') ie the requirement of the presiding officer to certify the number of votes given to each candidate in Form 14. The petition alleges that in certifying Form 14, the presiding officer knew or ought to have known that the particulars of the votes in Form 14 were incorrect. The petitioner then links this alleged transgression to s 4(a) of the said Act and therefore contends there has been breach of written law under s 32(b) of the said Act.

[6] Counsel for the respondents in particular senior federal counsel Puan Narkunavathy for the first and second respondents argued that s 4(a) of the said Act is an 'offences' provision and not written law and it therefore follows the petition falls woefully short of particulars that justify the prayers that the petitioner seeks. Counsel for the petitioner, YB Mohamed Hanipa bin Maidin contends that the petition has been sufficiently particularised and has crossed the threshold of r 4(1)(b) of the said Rules to enable the same to be set down for trial.

[7] It is my view that the non-compliance of the written law that the petitioner is complaining about is reg 25(12)(b) of the said Regulations. For the petitioner to succeed on a plea of s 32(b) of the said Act, the relevant regulation that must be pleaded and referred to is reg 30(1) of the said Regulations which reads and I quote:

> Failure to comply with provisions of Regulations
>
> 30(1) No election shall be invalid by reason of any failure to comply with any provision of these Regulations relating to elections if it appears that the election was conducted in accordance with the principles laid down in such provisions, and that such failure did not affect the result of the election.

[8] The essential of a plea of the beach of the said Regulations including reg 25(12)(b) must contain an averment that the election was not conducted in accordance with the principles laid down in the said Regulations and that such failure did not affect the result of the election. I have perused through this petition and I can find no reference in the said petition to reg 30(1). In the said petition there has not been a plea that there has been a breach of reg 25(12)(b) as set out in reg 30(1) of the said Regulations. To my mind reg 30(1) is the

regulation that creates the election offence under s 32(b) of the said Act, for it is the enabling regulations that provides for failure to comply with the provisions of the said regulations.

[9] References to s 4(a) of the said Act in the petition are references to offences under the said Act and do not constitute the written law being referred to s 32(b) of the said Act. A breach of s 4(a) of the said Act would lead to criminal charges being preferred against the presiding officer but does not constitute an electoral offence as envisaged by s 32(b) of the said Act. I refer to the decision of Lamin J (as he then was) in *Hamad bin Mat Noor v Tengku Sri Paduka Raja & Ors* [1993] 3 MLJ 533 and I quote:

> As I see it, the scheme in the Act can be divided into two clear areas of judicial functions. The first relates to those provisions pertaining to acts, the proof of which must be done by way of criminal prosecutions in a criminal court, which by the end of the day will hand out punishments if the charges are proven. The second relates to acts, allegations of which are to be brought before the election judge by way of petitions with the view to avoid elections. Only two types of courts are envisaged by the Act to deal with those two areas, namely, the sessions court (ss 11 and 27), which is to attend to criminal prosecutions, and the court of an election judge, which is to hear election petitions. The sessions court will no doubt conduct its proceedings in accordance with the Code because criminal charges are brought before it for determination. As for the conduct of proceedings in a court of an election judge, I am extremely attracted to the proposition that the court of an election judge must be regulated by one clear cut procedure and not, as suggested, that it must depend on the circumstances of each case, in that whether the act involved was criminal in nature or otherwise. If an election judge were given powers that could be stretched beyond the unknown, then different election judges may very well treat the same situation differently and this would bring about uncertainty in the law.
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> Dato Suhaimi implored me to adopt the approach that I must first determine the nature of the alleged act and having done that, it would, by itself, identify the type of onus of proof, and accordingly, the kind of procedure to be followed. I have never dismissed from my mind the standard of proof required of a petitioner in an allegation of corrupt practice and the grave concern expressed by Raja Azlan Shah J (as His Majesty then was) in *Ali Amberan 2*, regarding the 'primary purpose of the diverse provisions of the election law' being that 'to safeguard the purity of the election process' and the duty of the court 'to purge elections all kinds of corrupt or illegal practices so as to protect the political rights of the citizens and the constituency'. As to the standard of proof, Abdoolcader J (as he then was) in *Re Pengkalan Kota Bye-Election*; *Teoh Teik Huat v Lim Kean Siew & Anor 4* was of the same opinion when he said (at p 267):
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> Adverting briefly to the requisite elements of ss 10(a), 11(1) and 32(c) of the Act, for the purposes of these proceedings, in a corrupt practice such as bribery which is alleged in this case the corrupt intention and the corrupt inducement to the electors or voters to vote or refrain from voting must exist. The corrupt practice of bribery which is a criminal offence by statute must be strictly proved beyond all reasonable doubt by clear and unequivocal evidence.

> In order to determine whether an act is criminal in nature, it has been said time and again that one must ask the question as to whether it entails penal consequences. In other words, whether it is visited by some form of punishment. In the case of s 11(1) of the Act, the form of punishment is clearly provided. It is also clearly provided that offences under paras (a)–(b) of s 11(1) (which include offences of bribery) are therein categorised as seizable offences 'within the meaning of the Criminal Procedure Code'. I repeat, those offences are to be proved by way of charges preferred in a criminal prosecution. But, it is not so in the case of acts coming within the ambit of s 32. (It is agreed that the acts alleged in our case come squarely within the meaning of s 32(c)). The same question must be asked here. Would those acts enumerated in s 32 be visited by some form of punishment? The simple answer is a big 'No'. The marginal note for s 32 reads 'Avoidance of election on election petition'. If the act as is alleged is proved, then it will be a ground to declare the election of the respondent concerned null and void. So none of the acts enumerated in s 32 is criminal in nature. Two acts may be called by the same name but one is visited with punishment while the other is not. In the former, if the respondent is found guilty and convicted, he may be imprisoned and, at the same time, his election to office would be declared null and void (s 31). In the latter, there would be no finding of guilt and no conviction, only the respondent's election will be declared null and void (s 32).

[10] Looking at s 4(a) of the said Act, it clearly does not deal with electoral offences but renders the presiding officer liable to criminal prosecution.

[11] I refer to the decision of the Federal Court in the case of *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors* [2009] 3 MLJ 589; [2009] 3 CLJ 221 and to the judgment of His Lordship Augustine Paul FCJ at p 230 of the report.

> A prayer can be sustained only by a statement of the facts necessary to establish it. They will be the facts on which a petitioner will rely. Thus there must sufficient facts to constitute a cause of action as they will form the basis of the prayer. It is therefore abundantly clear that the facts to be pleaded pursuant to r 4(1) and r 4(4)(3) must be such as to make out a case for the petitioner. In other words all the material facts must be pleaded, though a concise statement of them suffice. Failure to comply with this mandatory requirement will render the petition defective.

[12] I also wish to refer to the decision of His Lordship Justice Chang Ming Tat (as he then was), in *Mohamed Jaafar v Sulaiman & Anor* [1970] 1 MLJ 18 and to the judgment of His Lordship at p 19 and I quote:

> On a proper interpretation, reg 31 read together with s 32(b) of the Act clearly establishes that non-compliance either with the provisions of any written law relating to any elections or with any of the regulations relating to elections is per se not fatal unless the election has not been conducted in accordance with the principles laid down in such law and such non-compliance affects the results of the election. The only difference, as far as I can see, between s 32(b) and reg 31(1), is that

A the section is in positive and the regulation in negative language. Before an election court can declare any election void for reasons of non-compliance with the provisions either of any written law or of any regulations relating to elections, it must be satisfied, among other things, that the failure of compliance affects the results of the election.

B

[13] I find confirmation in what I believe to be the proper interpretation in the judgment of the Court of Common Pleas delivered by Lord Coleridge CJ in the case of *Woodward v Sarsons & Anor* (1875) (Birmingham Case) 32 LT 867 at p 873, LR 10 CP 733; [1874–80] All ER Rep 262.

C

[14] This case which was founded on alleged wrongful markings of ballot papers was decided on the issue whether the irregularities which had been proved rendered the election void under the provisions of s 13 of the Ballot Act 1872, which is in almost identical words with our s 32(b).

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What Lord Coleridge CJ said was this:

> It is said that s 13, though it is in negative form, assumes as an affirmative proposition, that a non-compliance with the rules or any mistake in the use of the forms, would render an election invalid, unless it appeared that the election was
E conducted in accordance with the principles laid down in the body of the Act, and that such non-compliance or mistake did not affect the result of the election. If this proposition be closely examined, it will be found to be equivalent to this — that the non-observance of the rules or forms, which is to render the election invalid, must be so great as to amount to a conducting of the election in a manner contrary to the
F principle of an election by ballot, and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of voters, or in other words, the result of the election.

[15] The other observation of the petition is in the relief sought for instance
G para 4.1(a) of the said petition the petitioner pleads breach of s 4(a) of the said Act and goes on to use the following words and I quote:

> dan ketidakpatuhan tersebut telah menyentuh keputusan pilihanraya tersebut sepertimana yang dinyatakan di bawah s 32(b) Akta Kesalahan Pilihan Raya 1954.

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[16] This phrase similarly appears in other paragraphs of the said petition. Looking at reg 30(1) read together with s 32(b) of the said Act it is necessary not only to plead that the election result is affected but must proceed to show how the election result would have been affected in favour the losing candidate.
I This would enable the respondent particularly the third respondent to answer the charges against him. In this case the petitioner should have gone on to say that the veracity of the Form 14 and the particulars stated therein if true and proved at trial would have affected the election results in favour of the losing candidate.

[17] By way of analogy I refer to the text of *Election Laws, Practise & Procedure* at p 939 which quotes a decision of the Indian Supreme Court in *Vashist Narain Sharma v Dev Chand and Ors* 1954 AIR 513 and I quote:

> These words seem to us to indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate.

[18] Although the Indian comparable section uses the word 'materially' which is absent in our provision, the views expressed by the Indian Supreme Court are instructive and support the contention that it is not enough for a petitioner to say that the election result would be affected but must state how.

[19] In the light of the aforesaid and with the lack of reference to reg 30(1) of the said Regulations, I am of the view the petition is flawed and should be dismissed. I refer to the decision of the Federal Court in *Tan Sri Joseph Kurup v Danny Anthony Andipai & Anor* [2009] 3 MLJ 1 and to the holding of the Federal Court and particularly held [1] at p 2:

> In order to fall within the ambit of the provisions of s 32(b) of the Act, it is incumbent upon the petitioner to plead in his election petition that there had been non-compliance with the provisions of any written law relating to the conduct of any election and such non-compliance affected the result of the election. The respondent's failure to specify which provisions of the written law relating to the conduct of the election had not been complied with by the RO was fatal. Since the mandatory requirement stipulated by s 32(b) of the Act had not been met by the respondent, the learned judge ought to have dismissed the respondent's petition outright.

NON-COMPLIANCE OF R 15 OF THE ELECTION PETITION RULES 1954

[20] The third respondent having adopted the arguments of the first and second respondents with regards of the body of the petition, argues that there has been non-compliance with r 15(1) of the Election Petition Rules 1954 namely that the rule requires the election petition to be served by the petitioner personally. It is not disputed the petitioner served the notice of presentation of the petition through his solicitors as the affidavit of service shows. It is also clear that the provisions of r 15 are mandatory in nature and non-compliance is fatal (see *Devan Nair v Yong Kuan Teik* [1967] 1 MLJ 261).

[21] I am in total agreement with the reasoning of Their Lordships in the cases of *Muhammad Sanusi bin Md Nor v Md Tajuddin bin Abdullah dan lain-lain* [2009] 8 MLJ 131 and *Mohd Sabu v Pegawai Pengurus Pilihan Raya &*

Yang Lain [2008] 9 CLJ 26 and I would hold that the particular rule does not require the petitioner to serve personally. Rule 15 read together with r 9 surely must suggest that a duly appointed advocate by the petitioner who attends to service of the petition on behalf of the petitioner would sufficiently comply with r 15 of the Election Petition Rules. I therefore dismissed the third respondent's objection as to service.

[22] In relation to para 6 of the petition, election offences must fall within the ambit of s 32 of the said Act that enables the court to avoid an election and s 2(i) of the said Act bears no relevance to the issues to be considered by an Election Court.

[23] In conclusion, I would like to refer to the text in *Election Laws, Practise & Procedure*, VS Rama Devi and SK Mendiratta at p 914:

> The law on the point has been further elucidated by the Supreme Court in *V Narayanswamy v C P Thirunavukkarasu*, as follows:
>
> > … an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the Court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the Court has to find out whether these averments disclose a cause of action or a triable issue as such. Section 81, 83(1) (c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition.

[24] As to the issue of cost, I invited counsel to submit on the same. When dealing with the question of costs, I take note that the quantum is in absolute discretion of the court. However, in my view the court when making an order for costs must take into account when striking out petitions, the petitions have essentially been caught by the net of technicalities. It also to be noted that in this petition no hearing viva voce took place, and the petitioner when filing this petition was only exercising his rights under the law. In this particular petition, the facts do not suggest frivolity but in view of the technical nature of the law the petition stands to be dismissed. On the other end of this case, the work, research and skills of counsel of the respondents must also be taken into account. I therefore allowed a sum RM20,000 each for the first and second respondents and RM10,000 for the third respondent in view of the fact the third respondent's objection on service was not upheld.

[25] It is for these aforesaid reasons that I so ordered.

Election petition struck out with costs.

Reported by Ashgar Ali Ali Mohamed